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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and Bernard L.
Madoff,

Plaintiff,

v.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES LLC,
and J.P. MORGAN SECURITIES LTD.,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-4932 (SMB)

**STIPULATION AND ORDER FOR
VOLUNTARY DISMISSAL OF CERTAIN AVOIDANCE CLAIMS WITH PREJUDICE**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the estate of Bernard L. Madoff individually (“Madoff”), by and through his counsel, Baker & Hostetler LLP, and defendant JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC and J.P. Morgan Securities, Ltd. (collectively, “JPMorgan”), by and through their counsel, Wachtell, Lipton, Rosen & Katz (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On December 2, 2010, the Trustee filed a complaint (the “Complaint”) commencing an adversary proceeding captioned *Picard v. JPMorgan Chase & Co, et al.*, No. 10-4932 (the “JPMorgan Adversary Proceeding”) against JPMorgan seeking to avoid and recover under, *inter alia*, 11 U.S.C. §§ 544(b), 547, 548 and 550 and the New York Uniform Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) (collectively, the “Avoidance Claims”) approximately \$425 million of transfers or other payments received by JPMorgan prior to the collapse of BLMIS, along with interest. The Trustee also asserted claims for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, conversion, unjust enrichment, and contribution against JPMorgan (the “Common Law Claims”).

2. On February 8, 2011, JPMorgan moved to withdraw the reference from the Bankruptcy Court, which was granted by the District Court (McMahon, J.) on May 23, 2011.

3. On June 3, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Complaint.

4. On June 24, 2011, the Trustee filed an amended complaint (the “Amended Complaint”).

5. On August 1, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Amended Complaint. The Trustee opposed.

6. On November 1, 2011, the District Court granted JPMorgan’s motion to dismiss the Trustee’s Common Law Claims and returned all the Avoidance Claims to the Bankruptcy Court for further proceedings. *Picard v. JPMorgan Chase & Co.*, 460 B.R. 84 (S.D.N.Y. 2011).

7. The Trustee appealed to the United States Court of Appeals for the Second Circuit (the “Second Circuit”), which affirmed the District Court’s ruling on June 20, 2013. *Picard v. JPMorgan Chase & Co. (In re Bernard L. Madoff Investment Securities LLC)*, 721 F.3d 54 (2d Cir. 2013).

8. The Trustee sought review of the Second Circuit’s decision by the United States Supreme Court by filing a petition for a writ of *certiorari* on October 9, 2013. The Trustee’s petition is pending.

9. On October 11, 2013, JPMorgan served an answer to the Amended Complaint on the Trustee.

10. On January 6, 2014, the Parties entered into settlements pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, resolving the Avoidance Claims (the “Avoidance Settlement”) and the Common Law Claims in separate agreements, which were approved by this Court on February 5, 2014. ECF Nos. 51, 52.

11. Pursuant to the settlement agreement relating to the Avoidance Claims (the “Avoidance Settlement Agreement”), the Trustee must file a notice of dismissal of the

Avoidance Claims after receiving the settlement payment of \$325 million from JPMorgan. *See* Trustee's Motion, Exhibit A at ¶ 6, ECF No. 29. The Trustee has received the settlement payment. No appeals were filed to this Court's order approving the settlement. Accordingly, the Avoidance Settlement is final.

12. In accordance with Federal Rule of Bankruptcy Procedure 7041(a)(1)(ii), Federal Rule of Civil Procedure 41(a)(1), and the Avoidance Settlement Agreement, the Parties hereby stipulate to a dismissal with prejudice of the Trustee's Avoidance Claims against JPMorgan in the above-captioned adversary proceeding, specifically, Counts 1-11 of the Amended Complaint.

13. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

14. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Stipulation.

Dated: March 21, 2014
New York, New York

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the Estate of Bernard L. Madoff*

*Attorneys for Defendants JPMorgan Chase &
Co., JPMorgan Chase Bank, N.A., J.P. Morgan
Securities LLC, and J.P. Morgan Securities LTD*

SO ORDERED

Dated: March 24th, 2014
New York, New York

/s/ STUART M. BERNSTEIN
HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE